



July 29, 2020

# Senate GOP Releases COVID-19 Stimulus Bill—HEALS Act

On Monday, July 27, Senate Majority Leader Mitch McConnell (R-KY) released a \$1 trillion stimulus package in response to the ongoing effects of the COVID-19 pandemic. The Brownstein Tax Policy Team has summarized the following tax, education, labor and small business provisions in the HEALS Act. Each section contains an overview.

## *American Workers, Families, and Employers Assistance Act*

### **TITLE I—FURTHER RELIEF FOR WORKERS AFFECTED BY CORONAVIRUS**

**Overview:** The UI benefits provisions in the Senate GOP bill are an attempt to reconcile unemployment numbers, which are expected to remain high, and concerns from employers that overly generous COVID-19 UI compensation will deter employees from returning to work. To that end, the bill cuts the FPUC supplemental payments that expire on July 31 from \$600 to \$200 through Oct. 4. After this date, the bill sets enhanced federal UI at 70% of a worker's previous wages, with a maximum benefit of \$500 per week. Low-income Americans would take the biggest hit, since UI benefits under the CARES Act were not capped at 100% of pre-COVID-19 wages. However, employers are hopeful that the wage cap will result in those called back to work returning to avoid a reduction in income.

The bill also provides incentives to states to support low-income individuals by providing reimbursement for the increased costs of providing cash assistance and other short-term help through the Temporary Assistance to Needy Families (TANF) program. The bill conforms the eligibility requirements of the CARES Act's Pandemic Unemployment Assistance (PUA) with the U.S. Department of Labor's (DOL) longstanding Disaster Unemployment Assistance (DUA) program and provides state funding to upgrade state unemployment systems.

The unemployment benefits section of the HEALS Act is less comprehensive than the HEROES Act, which extends several benefits from the CARES Act through the end of next year. The HEALS Act also does not extend federal funding to states for the provision of certain UI benefits, such as the waiver of a one-week waiting period to access benefits and funding for Short-Time Compensation programs.

It is expected that during negotiations on a bipartisan package, Democrats will push for enhanced UI benefits, including a larger FPUC payment and more funding for states to continue to pay UI claims.

### **Sec. 101. Improvements to Federal Pandemic Unemployment Compensation to Better Match Lost Wages**

- Reduces FPUC created by Sec. 2104 of the CARES Act, from \$600 to \$200, after July 31, 2020, through Oct. 4, 2020.
- Starting on Oct. 5, 2020, through the end of the year, the \$200 FPUC payment would be replaced with an amount

(not greater than \$500) equal to one of the following:

- 70% of the individual's average weekly wages, minus the individual's base amount, defined under Sec. 2102(d)(1)(A)(i) of the CARES Act as the weekly benefit amount authorized under state unemployment compensation law.
- A state may elect a formula to determine FPUC, as long as the resulting payment is equal to 70% of the individual's lost wages.

States that are unable to provide a second payment tied to lost wages could apply for a waiver from DOL to continue paying a fixed dollar amount—\$200—for up to two months through Nov. 30, 2020.

- Short-Time Compensation Arrangements under Secs. 2108 or 2109 of the CARES Act continue to be eligible for the FPUC payments.
- Amends the CARES Act such that starting on Oct. 5, 2020, FPUC payments are considered income when determining eligibility for federal low-income programs in the same way as wages and regular state UI payments do now.
- This provision also requires states, beginning 30 days after enactment, to notify UI beneficiaries and employers about state law regarding: return to work requirements; rights to refuse to return to work or suitable work; and how an individual can contest the denial of a claim as a result of the requirements listed above.
- States must also notify employers of this same information.
- **Impact:** This provision reduces and extends FPUC payments created under the CARES Act, allowing for at least 70% wage replacement through the end of the year. While it is a substantial decrease from the \$600 FPUC payments, which were not limited to 100% of an individual's income, it provides some plus up to state UI benefits. The changes to FPUC also address employer concerns that employees receiving more from UI than pre-COVID-19 wages, they would not want to return to work.

#### **Sec. 102. Supplemental Emergency Unemployment Relief for Governmental Entities and Nonprofit Organizations**

- The CARES Act federally funds state reimbursements to nonprofits, government agencies and Indian tribes for up to 50% of the costs they incur through Dec. 31, 2020, to pay unemployment benefits. This provision increases the percentage to 75%.
- **Impact:** The provision allows states to defray a greater percentage of unemployment benefits costs for certain entities, incentivizing them to continue providing safety nets for employees.

#### **Sec. 103. Conforming Eligibility for Pandemic Unemployment Assistance to Disaster Unemployment Assistance and Accelerating Appeal Review**

- Although the CARES Act modeled the PUA program after DOL's DUA program, the department found that the programs were not related. This provision requires states to follow the same procedures to verify eligibility for PUA as are used to verify eligibility for DUA.
- Applicants for PUA are able to receive benefits immediately, but must provide documentation to substantiate prior employment or self-employment (or the intended commencement of employment or self-employment) within 21 days of applying for benefits.
- For PUA claims made on or after the date of enactment, states shall require such documentation beginning not later than 30 days after enactment. For PUA claims made prior to the date of enactment, documentation of prior employment or self-employment must be made within 90 days of the date of enactment, or the claimant will be

ineligible to receive further PUA benefits.

- In addition, PUA applicants must self-certify that they have lost their principal source of income in order to be eligible to receive PUA assistance.
- States are allowed to process appeals concerning PUA benefits in the same manner as UI appeals, rather than requiring the appeals to be handled by the department's regional offices.
- **Impact:** This provision conforms the PUA to the DUA's benefit eligibility provisions, while accelerating appeal reviews under the states' UI provisions.

#### **Sec. 104. Improvements to State Unemployment Systems and Strengthening Program Integrity**

- This section provides \$2 billion in funding to assist states in upgrading their state UI technological systems. New state system requirements will include capability of handling surges in claims, ability to adjust wage replacement levels, ability to adjust earnings disregards, ability to vary benefits over a period of time, and automating processes that are currently done on a manual basis.
- Such funding shall also be utilized to improve states' use of electronic systems to detect and prevent fraud, and for employers to be able to effectively communicate with state unemployment agencies.
- The section provides DOL with additional authority to hold states accountable, including access to state electronic data on unemployment compensation claimant data, use of the national directory of new hires, and the ability to levy state civil money penalties for failure to meet state performance metrics.
- **Impact:** This provision updates state unemployment systems so that they have more modern electronic capabilities and accountability.

#### **Sec. 105. TANF Coronavirus Emergency Fund**

- Establishes a \$2 billion Coronavirus Emergency Fund for State Temporary Assistance for Needy Families Program within the Treasury. The fund will be used to provide states with grants during the third and fourth quarters of FY2020 and all of FY2021 for basic assistance, nonrecurring short-term benefits, and work supports for eligible families.
- The amount of the grants payable to a state shall be equal to 80% of the excess of the expenditures for the quarter as compared with the state's expenditures for the first quarter of FY2020.
- The aggregate amount of grants payable to a state shall not exceed the state's child poverty proportion amount for FY2020.
- **Impact:** This provision provides funding to states to support individuals with varied economic needs by reimbursing states for 80% of their increased costs of providing cash assistance and other short-term help through the TANF program as a result of the pandemic.

### **TITLE II—ASSISTANCE TO INDIVIDUALS, FAMILIES AND EMPLOYERS TO REOPEN THE ECONOMY**

#### **Subtitle A—Relief for Individuals and Families**

**Overview:** Similar to the HEROES Act, the HEALS Act includes a proposal for a second round of cash rebate checks for individuals. These payments are designed to help supplement income for individuals who have experienced unemployment, pay cuts, loss of benefits or simply have unforeseen expenses due to the pandemic. The payments are not taxable and can be used to pay for food, housing, clothing or any other purpose. Lawmakers also believe that if individuals spend this money, it will help economic recovery. Additionally, in light of the proposed reduction from \$600

to \$200 for supplemental FPUC payments, the rebates will provide temporary relief to low-income individuals who are most impacted by the decrease in FPUC.

### **Sec. 201. Additional 2020 Recovery Rebates for Individuals**

- Eligible individuals are entitled to receive a \$1,200 (\$2,400 if married) rebate under this section. Individuals may receive \$500 per qualifying dependent as well.
- Eligible individual is defined as a U.S. citizen or resident, who is not a dependent of another taxpayer and has a work-eligible Social Security Number, with adjusted gross income no more than \$75,000 (\$150,000 married and \$112,500 for head of household). As in the CARES Act, in the case of married individuals, if one individual does not have a Social Security Number, both are disqualified for the purposes of the rebate. Similarly, this rule is waived for members of the armed forces.
- Under the CARES Act, the additional \$500 was limited to taxpayers with a dependent child under 17. This bill allows the additional \$500 to be provided to taxpayers with dependents of any age with a valid Social Security Number or an Adoption Taxpayer Identification Number.
- Income eligibility is determined by 2019 tax returns. If a 2019 return has not been filed, a 2018 return may be used. Alternatively, a Social Security Benefit Statement or a Social Security Equivalent Benefit Statement may also be used to verify income.
- **Impact:** The additional \$1,200 payments are intended to help individuals that may have experienced pay reductions, unemployment or furloughs during the pandemic to supplement their income.

### **Sec. 202. Modifications to Recovery Rebates Made Under the CARES Act**

- Rebates are not available for prisoners or persons who were deceased before Jan. 1, 2020.
- **Impact:** This section corrects some of the technical errors and unintended payments that were made under the CARES Act.

### **Subtitle B—Job Creation and Employment**

**Overview:** The HEALS Act, through the use of tax credits, incentivizes employers to:

- **Retain:** keep current employees through expansions of the ERTC;
- **Rehire:** subsidize the hiring of former employees or additional employees who are currently receiving unemployment assistance through an expansion of the WOTC; and
- **Retrofit:** provide a safe and healthy work environment by helping businesses defray the costs of PPE, cleaning, and technological and structural changes to offices in response to COVID-19.

Subtitle B also adds a safe harbor so that companies may provide certain COVID-19-related assistance to independent contractors without increasing the risk that such independent contractors will be reclassified as employees.

While the HEROES Act included a very generous ERTC provision, it did not include an expansion of the WOTC or a PPE and workplace modification credit. Notably, the HEALS Act does not include a provision to help businesses cover the costs of rental expenses, mortgage or utilities. The HEROES Act included a tax credit for this purpose for small businesses.

### **Sec. 211. Enhanced Employee Hiring and Retention Payroll Tax Credit**

- The CARES Act's ERTC is enhanced by increasing the amount and percentage of eligible wages, from 50% and a cumulative \$10,000 (\$5,000 credit) per employee to 65% and \$10,000 per quarter and \$30,000 aggregate for all quarters (\$19,500 credit) per employee.
- To be eligible, an employer must have either a partial/full suspension of operations due to a COVID-19 shutdown order, or have a significant decline (at least a 50% drop) in gross receipts when compared to the same quarter in 2019. This bill also permits relief if there is a 25% drop in gross receipts in Q3 and Q4 of 2020, allowing more employers to qualify.
- The definition of gross receipts is modified to include gross receipts of tax-exempt organizations.
- Under the CARES Act, qualified wages for large employers only include amounts paid for time the employee is not performing services. The bill raises the large employer threshold so that it only applies to companies with 501 or more full-time employees as opposed to 101 or more.
- The CARES Act also limited large employers so that certain pay increases did not meet the definition of qualified wages as they did not include amounts above what an employee would otherwise have been paid for working the equivalent duration during the 30 days before such period. This limitation is removed.
- The CARES Act provided that recipients of PPP loans were ineligible for the ERTC. The IRS provided guidance that employers that repaid their PPP loans by May 18, 2020, were eligible for the ERTC. This bill provides that an employer may have both a PPP and claim the credit after June 30, 2020, but no double benefit is permitted (i.e. forgivable PPP amounts cannot also be counted as qualified wages).
- The Secretary of the Treasury is directed to issue guidance or regulations to prevent large employers from using leaseback arrangements to avoid the restrictions on companies with over 500 full-time employees.

These amendments to the CARES Act's ERTC are generally effective beginning July 1, 2020; however, an employer who previously filed an employment tax return may elect to treat qualified wages paid in the first two quarters of 2020 as paid in the quarter which includes the date of enactment (likely Q3) to the extent the credit was not already claimed with respect to such wages.

- **Impact:** This provision increases the number of businesses eligible for the ERTC and also increases the maximum credit per employee from \$5,000 to \$19,500, further incentivizing employers to retain their employees during the COVID-19 emergency. The reduction in the threshold for percentage decline in gross receipts is also in recognition that businesses may see an increase in revenues, but still need time to fully recover and adapt to operating in a COVID-19 environment.

#### **Sec. 212. Expansion of Work Opportunity Credit**

- Adds "qualified 2020 COVID-19 unemployment recipient" to the list of targeted groups eligible for the I.R.C. §51 WOTC.
- The credit is limited to 50% of \$10,000 of wages per year (\$5,000 credit) per individual (25% for those who work between 120 and 400 hours). While the WOTC historically has varied among targeted groups, it is most commonly 40% of \$6,000 of wages per year (\$2,400 credit) per individual.
- "Qualified 2020 COVID-19 unemployment recipient" is defined as any individual who (1) is certified as having been approved to receive unemployment compensation under state or federal law for either the week of or the week before the hiring date, and (2) begins work for the employer before Jan. 1, 2021.
- Rehires are credit eligible, but the Secretary of the Treasury is directed to prescribe regulations to prevent abuse

(i.e. to prevent terminating an employee to simply rehire them once on unemployment and credit eligible).

- Effective for individuals who begin work for an employer after the enactment date.
- **Impact:** This provision creates a credit for businesses that hire new employees and rehire former employees who are on unemployment, incentivizing businesses to increase the size of their workforce.

#### **Sec. 213. Safe and Healthy Workplace Tax Credit**

- Creates a refundable 50% payroll tax credit equal to the sum of qualified employee protection expenses, workplace reconfiguration expenses, and workplace technology expenses.
- The credit for each calendar quarter is equal to \$1,000 for each of the first 500 employees, \$750 for employees 501 to 1,000, and \$500 for each employee that exceeds 1,000. The credit is \$500 for self-employed individuals.
- Qualified employee protection expenses include COVID-19 testing, PPE and cleaning supplies or services. Qualified workplace reconfiguration expenses and workplace technology expenses are related to redesigning regularly used areas and adding technology that has a primary purpose of preventing the spread of COVID-19, is consistent with CDC and OSHA recommendations, and is not pursuant to a plan that was in place before March 13, 2020.
- Applies to amounts paid or incurred after March 12, 2020, and before Jan. 1, 2021.

**Impact:** This provision creates a refundable payroll tax credit for expenses related to preventing the spread of COVID-19, which will incentivize employers to adapt their businesses (and helping reimburse those that already have) in response to COVID-19.

#### **Sec. 214. COVID-19 Assistance Provided to Independent Contractors**

- A service recipient may provide the following benefits to a service provider, and such provision of benefits will not be considered when deciding whether the service provider is an employee or independent contractor:
  - financial assistance provided for time the service provider is not working or working less, as a result of COVID-19;
  - health care benefits and testing related to COVID-19;
  - masks, gloves, disinfectants, cleaning products and other PPE; and
  - training, standards and guidelines related to COVID-19.
- The provision of health care benefits, PPE and training related to COVID-19 to the service provider is treated as an I.R.C. §139 payment (i.e., not included in the service provider's gross income).
- Applies to benefits provided after March 12, 2020, and before Jan. 1, 2021.
- **Impact:** This provision establishes a safe harbor allowing companies to provide certain COVID-19-related assistance to service providers without jeopardizing the service provider's independent contractor status.

#### **Subtitle C—CARES Act Clarifications and Corrections**

**Overview:** Subtitle C makes clarifications and technical corrections to certain of the provisions of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136 (March 27, 2020) (the "**CARES Act**").

#### **Sec. 221. Application of Special Rules to Money Purchase Pension Plans**

- Coronavirus-related distributions of up to an aggregate \$100,000 from all eligible retirement plans in a plan sponsor's controlled group also can be taken from money purchase pension plans ("MPPPs").



- Amends Sec. 2202(a)(6)(B) of the CARES Act.
- Substantially identical to Sec. 40305 of the HEROES Act.
- Applies to coronavirus-related distributions from Jan. 1, 2020, through Dec. 31, 2020.
- **Impact:** Individuals who are (i) participants in qualified defined contribution plans that are MPPPs and (ii) “qualified individuals” are eligible for coronavirus-related distributions, if the plan is amended to add this distribution benefit.

#### **Sec. 222. Clarification of Delay in Payment of Minimum Required Contributions (Single Employer Pension Plans)**

- The deadline for making minimum required contribution payments to single employer pension plans, which otherwise would be due during calendar year 2020, is delayed to Jan. 4, 2021.
  - As implemented under the CARES Act, the delayed contribution amount must be increased by interest accruing between the original payment due date and the actual payment date.
- Amends Sec. 3608 of the CARES Act, which had delayed this payment deadline to Jan 1, 2021.
- **Impact:** This change reflects that the original deadline of Jan. 1, 2021, is a federal holiday and that Jan. 4, 2021, is the first business day of the 2021 calendar year.

#### **Sec. 223. Employee Certification as to Eligibility for Increased CARES Act Loan Limits From Employer Plan**

- A qualified employer plan (within the meaning of Code Sec. 72(p)(4)) is allowed to rely on a participant’s self-certification that the participant is a “coronavirus affected individual” within the meaning of Sec. 2202(a)(4)(A)(ii) of the CARES Act and thus is eligible to (i) apply for coronavirus-related loans (up to the lesser of \$100,000 or 100% of the vested accrued benefit) and (ii) delay the loan repayment and loan term by up to one year, if and to the extent the plan is amended to provide these benefits.
  - This self-certification is similar to the self-certification process included in the CARES Act that applied to coronavirus-related distributions.
  - Amends 2202(b) of the CARES Act.
  - Identical to Sec. 40303 of the HEROES Act.
- **Impact:** This change eases the burden on plan administrators to obtain satisfactory evidence that a participant is qualified for the favorable loan terms. However, the IRS will need to issue guidance as to whether the conditions that apply to a plan administrator’s reliance on a participant’s self-certification also will apply here.

#### **Sec. 224. Election to Waive Application of Certain Modifications to Farming Losses**

Amends Sec. 2303 of the CARES Act to allow a taxpayer who has a “farming loss” within the meaning of Code Sec. 172(b)(1)(1)(B)(ii) to make an irrevocable election to waive the application of one or both of the provisions under Sec. 2303 of the CARES Act for one or more of the tax years to which Sec. 2303 applies.

- Sec. 2303 of the CARES Act temporarily repeals the taxable income limitation under Code Sec. 172(a) by allowing (i) NOLs of 100% of losses for tax years 2018, 2019 and 2020 (rather than 80%) and (ii) a five-year carryback for losses in tax years 2018, 2019 and 2020. However, Sec. 2303 failed to retain the favorable provisions of the Tax Cuts and Jobs Act, Pub. L. 115-97 (Dec. 22, 2017) (TCJA), that were applicable to farming businesses.
- Prior to the CARES Act, the TCJA eliminated carrybacks for net operating losses (“NOL”) arising in

businesses *other than* farming businesses and casualty insurance companies for tax years ending after Dec. 31, 2017. Farm businesses should have retained a two-year carryback, instead of the five-year carryback. The TCJA also limited the NOL deduction to 80% of taxable income for tax years beginning after Dec. 31, 2017.

- Waiver election must be made by the due date for filing the taxpayer's return for the tax year.
  - The taxpayer is treated as having made the waiver election with respect to tax returns already filed.
- **Impact:** Restores the TCJA provision that gave a two-year carryback option to farmers for the 2018, 2019 and 2020 tax years. This provision had been inadvertently eliminated by Sec. 2303 of the CARES Act.

#### **Sec. 225. Oversight and Audit Reporting**

- Amends Sec. 19010(a)(1) of the CARES Act by adding (i) the Committee on Finance of the Senate and (ii) the Committee of Ways and Means of the House of Representatives to the definition of "appropriate congressional committee."
- **Impact:** Corrects a definitional error, the correction of which ensures that the Comptroller General will provide reports and information related to the receipt, disbursement and use of funds made available under the CARES Act to the Senate Finance Committee and the House Ways and Means Committee.

#### **TITLE IV—ADDITIONAL FLEXIBILITY AND ACCOUNTABILITY FOR CORONAVIRUS RELIEF FUND PAYMENTS AND STATE TAX CERTAINTY FOR EMPLOYEES AND EMPLOYERS**

**Overview:** The Coronavirus Relief Fund (CRF) of the CARES Act provided all 50 states, tribal governments and territories resources to cover specified expenses due to COVID-19. The bill expands the CRF by portions of the funds to be used for revenue shortfalls while creating uniform procedures for state tax certainty for employers and employees.

#### **Sec. 401. Expansion of Allowable Use of Coronavirus Relief Fund (CRF) Payments**

- Expands the date for which CRF resources can be used to cover expenditures from Dec. 30, 2020, to 90 days after the last day of the state or government fiscal year 2021.
- Retains CARES Act provisions for allowable uses but expands the uses to include "revenue shortfalls," defined as shortfalls of revenue from taxes, fees or other sources relative to fiscal year 2019 levels. The period covered is from March 1, 2020, to 90 days after the last day of a government's fiscal year 2021.
- To cover revenue shortfalls, a government must certify that at least 25% of CRF funds it received have been distributed to downstream governments. No more than 25% of CRF may be used by any state or government to cover revenue shortfalls.
- States may not use CRF to finance pensions and post-employment benefits, replenish rainy day funds, or influence legislation by government officers.
- **Impact:** Allows state and local governments more time to budget, expands use of CRF to cover portions of budget deficits and incentivizes state governments to distribute funds to local governments.

#### **Sec. 402. Accountability for the Disbursement and Use of State or Government Relief Payments**

- Codifies a [memorandum](#) on CRF reporting and record retention requirements issued by the Treasury on July 2, 2020, and expands the requirements to include covered revenue shortfalls.
- Requires the Treasury to provide Congress with quarterly reports on state and local government uses of CRF.



- **Impact:** Ensures accountability.

### **Sec. 403. State Tax Certainty for Employees and Employers**

- Creates uniform procedures for assessing state and local income taxes on individuals working remotely.
- Through 2024, employees performing duties in multiple states will be taxed only in their state of residence and states they are present in and performing duties for a specified period.
- A 90-day threshold for income earned in other states applies to frontline health care workers.
- **Impact:** Helps prevent surprise tax bills and multiple states seeking to tax an individual's wages.

## **TITLE V: EMERGENCY DESIGNATION**

### **Sec. 501. Emergency Designation**

- The amounts provided in the bill are designated as an emergency requirement.

### ***Supporting America's Restaurant Worker's Act***

**Overview:** Restaurants have been hit particularly hard by the COVID-19 emergency. This Act is designed to drive more business to restaurants, by temporarily allowing a 100% deduction on business meal expenses that was reduced to 50% under the GOP's 2017 Tax Cuts and Jobs Act.

#### **Sec. 1. Short Title**

- The name of the Act may be cited as the Supporting America's Restaurant Workers Act.

#### **Sec. 2. Temporary Allowance of Full Deduction for Business Meals**

- This Act removes the 50% deduction limitation (so that a 100% deduction is allowed) for business meal expenses incurred at a restaurant.
- Applies to amounts paid or incurred after the Act's enactment date and before Jan. 1, 2021.
- **Impact:** This Act will incentivize companies to provide business meals, driving more customers to restaurants. It also recognizes that federal assistance is needed since restaurants may see further declines in the winter since in some parts of the country, outdoor seating may no longer be an option.

### ***Continuing Small Business Recovery and Paycheck Protection Program Act***

## **TITLE I—PAYCHECK PROTECTION PROGRAM IMPROVEMENTS**

**Overview:** This title creates three entirely new SBA lending programs: PPP Second Draw Loans, Recovery Sector Loans, and a \$10 billion investment facility for the SBIC program. This portion of the relief package would bring the total of PPP loan funds available to \$749 billion. It would also provide \$57.7 billion for newly created SBA Recovery Sector Loans.

The PPP Second Draw Loans are for eligible entities with 300 or fewer employees that have experienced a drop in gross receipts by 50% or more.

For Recovery Sector Loans, eligible entities are businesses that have 500 employees or less and show a reduction in gross revenue by 50% in the first or second quarter of 2020 compared to 2019.

Eligibility also requires either an applicant that is a seasonal employer seeking a loan under \$1 million or has their principal place of business and 50% of their income derived from a small business low-income census tract. The bill also allows for businesses to modify existing PPP loans due to the expansion in eligible costs.

The bill expands the allowable costs for PPP loans. The PPP currently limits forgivable costs to payroll costs, continuation of health and leave benefits, mortgage interest payments, rent payments, utility payments, interest on debt obligations incurred prior to Feb. 15, 2020, and the refinance of Economic Injury Disaster Loans (EIDL) made between Jan. 31, 2020, and April 3, 2020, if used for payroll costs. The draft bill would expand forgivable costs to include covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures. Allowable payroll costs would also include group insurance plans other than health plans.

### **Sec. 101. Additional Eligible Expenses**

- Expands the allowable costs to covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures incurred before Jan. 1, 2021.
- Defines “covered operations expenditure” as “a payment for any business software or cloud computing” service that facilitates:
  - business operations,
  - product or service delivery,
  - the processing, payment or tracking of payroll expenses,
  - human resources,
  - sales and billing functions, or
  - accounting or tracking of supplies, inventory, records and expenses.
- Defines “covered property damage cost” as uninsured and uncompensated losses in 2020 “related to property damage and vandalism or looting due to public disturbances.”
- Defines “covered supplier cost” as payments to a supplier for “the supply of goods that are essential to the operations of the entity at the time at which the expenditure is made” if the contract for goods was in effect before Feb. 15, 2020.
- Defines “covered worker protection expenditure” as operating or capital expenditures that were necessary to comply with HHS, CDC and OSHA guidance for sanitation, social distancing and worker and customer safety between March 1, 2020, and Dec. 31, 2020. This does not include residential real property or intangible property. Allowable costs include the purchase, maintenance or renovation of assets that create or expand:
  - a drive-through window facility;
  - an indoor, outdoor or combined air or air pressure ventilation or filtration system;
  - a physical barrier such as a sneeze guard;
  - an indoor, outdoor or combined commercial real property;
  - an on-site or off-site health screening capability;
  - other assets needed to comply with federal regulations; or
  - the purchase of PPE.

- **Impact:** Definitional section.

#### **Sec. 102. Lender Safe Harbor**

- Provides a lender safe harbor for lenders who, in good faith, rely on an applicant's statements and application submissions as to eligibility for PPP loans.
- **Impact:** Ensures lenders will not be subject to enforcement actions or penalties for good faith reliance on an applicant's statements and application submissions.

#### **Sec. 103. Selection of Covered Period for Forgiveness.**

- Amends the CARES Act's PPP loan provisions to allow for the forgiveness period to be any eight-week period following the disbursement of funds until Dec. 31, 2020.
- **Impact:** Provides flexibility for determining the eight-week period when PPP funds may be used.

#### **Sec. 104. Simplified Application**

- For loans under \$150,000, borrowers may certify they made a good faith effort to comply with PPP loan requirements and will keep records for three years in order to apply for forgiveness.
- For loans between \$150,000 and \$2 million, the forgiveness application process is streamlined, lenders are instructed to review only the completed application, and borrowers must retain records for at least three years.
- Provides that if an audit uncovers fraud, ineligibility or material noncompliance that the loan amount may be modified, and the forgiveness amount may be modified.
- Allows for the collection of demographic information.
- Requires the SBA to submit an audit plan and audit reports within 30 days of enactment to the House and Senate small business committees.
- **Impact:** Streamlines the forgiveness application process for loans under \$150,000 and loans between \$150,000 and \$2 million, and imposes congressional oversight requirements.

#### **Sec. 105. Group Insurance Payments as Payroll Costs**

- Adds "and other group insurance" plans as an allowable payroll cost.
- **Impact:** Expands and clarifies that payments for group insurance plans including health plans are eligible payroll costs.

#### **Sec. 106. Paycheck Protection Program Second Draw Loans**

- Creates a new program to supplement the PPP loan program entitled "Paycheck Protection Program Second Draw Loans."
- Eligible entities are a business concern, nonprofit organization, veterans organization, tribal business concern, eligible self-employed individual, sole-proprietor, independent contractor or small agricultural cooperative that:
  - qualify under SBA 7(a) size standards or have 300 employees or less; and
  - can demonstrate a reduction in gross receipts by 50% or more.
- Expressly disqualifies publicly traded companies, businesses in the financial services sector that received first

round PPP loans, and entities affiliated with the People's Republic of China.

- Businesses in the food service and accommodations industry (NAICS code 72) with multiple locations that have 300 employees or less at each location will be eligible to apply for loans up to \$2 million.
- Loan amounts are capped at \$2 million and may be up to 2.5 months of annual payroll costs.
- If a business received an initial PPP loan and then also applies for another SBA loan within 90 days of approval, the aggregate total must not exceed \$10 million.
- Loan forgiveness for the PPP Second Draw Loans would cover the same costs as PPP loans and would still require 60% of funds for payroll costs. The program would be effective through Dec. 31, 2020.
- Sets aside \$25 billion for borrowers who employ 10 or fewer employees and sets aside \$10 billion for community lenders.
- **Impact:** Eligibility for PPP Second Draw Loans is narrowed from the original PPP program; however, businesses may apply for more PPP money if they meet these new eligibility requirements.

#### **Sec. 107. Continued Access to the Paycheck Protection Program**

- Reduces the maximum amount of a PPP loan issued after enactment to \$2 million from \$10 million.
- **Impact:** If passed, the bill would reduce the maximum amount of a new PPP loan.

#### **Sec. 108. Increased Ability for Paycheck Protection Program Borrowers to Request an Increase in Loan Amount Due to Updated Regulations**

- Allows the SBA administrator to make an interim final rule to allow for an increase in an existing PPP loan, even if funds have been disbursed and the lender reported the initial loan to SBA.
- **Impact:** Due to increased allowable costs in the bill, the SBA will have the authority to modify already issued PPP loans to accommodate these changes.

#### **Sec. 109. Calculation of Maximum Loan Amount for Farmers and Ranchers Under the Paycheck Protection Program**

- Establishes a targeted PPP loan calculation for farmers and ranchers who operate as a sole proprietor, independent contractor or self-employed individual, using gross income reported on a Schedule F and were in business on Feb.15, 2019, through June 30, 2019.
- If a loan was already issued, lenders may recalculate the loan amount under this provision if it would result in a larger loan.
- **Impact:** Provides modified calculation for PPP loan assistance to small farmers and ranchers, allowing for an increase in loan funds where eligible.

#### **Sec. 110. Farm Credit System Institutions**

- Allows for Farm Credit System Institutions to participate in PPP and PPP Second Draw lending.
- **Impact:** Allows for smaller lending institutions to participate in the PPP and PPP Second Draw loan program

#### **Sec. 111. Definition of Seasonal Employer**

- This provision defines the term "seasonal employer" to mean an eligible recipient that either operates no more than seven months in a year or earns under a third of its receipts in any six months in the preceding calendar year.

- **Impact:** This defines the term “seasonal employer” in the Small Business Act.

#### **Sec. 112. Changes to the 7(a) Loan Guaranty Program for Recovery Sector Business Concerns**

- This provision provides definitions and terms for the 7(a) loan for seasonal business and business located in a covered populations census tract. These small business low-income census tracts are tracts that are not located in a metropolitan area, the median family income does not exceed 80% of the statewide median family income, and tracts that are located in a metropolitan area where the median family income does not exceed 80% of the greater statewide family income.
- Eligibility for the (7)a programs includes a small business as defined by the SBA size standards, 500 employees or less, and shows a reduction in gross revenue by 50% in the first or second quarter of 2020 compared to 2019. Eligibility also requires either an applicant that is a seasonal employer seeking a loan under \$1 million or has their principal place of business and 50% of their income derived from a small business low-income census tract. The provision also excludes any entity that received a second draw of PPP and entities made ineligible for the PPP second draw loans.
- Loans are meant to meet working capital needs, acquire fixed assets or refinance indebtedness. The maximum loan amount is \$10 million, or the amount equal to 200% of average annual receipts. Applicants may only receive one covered loan. Applications are due no later than Dec. 31, 2020. To receive a loan, it is not necessary for the entity to show they are ineligible to obtain a loan elsewhere. The loan has a maturity of 20 years and the interest rate equal to the sum of the SOFR in effect for the days in the relevant quarter plus 300 basis points. The SBA covers 100% of the loan. SBA will pay the amount of interest owed on a loan so that the interest rate paid by the entity is 1%. Payments by the entity for principal or interest are not due for the first two years. After two years, the administrator may not grant more than an additional two years of principal deferral if they are deemed as economically distressed.
- Within 60 days of enactment, the SBA must reduce barriers to sell loans to the secondary market and establish a process for a PPP lender to be eligible to make loans. The SBA shall reimburse an authorized lender to make a loan that is 3% of the principal amount of the financing up to \$350,000 and 1% of the principal amount of financing of the covered loan upwards of \$350,000. The standard operating procedure allows an approved lender to make covered loans to use existing program guidance.
- **Impact:** This provision sets out definitions and terms for 7(a) loans made to small businesses as defined by SBA and those in low-income business tracts. The loans are up to \$10 million and have certain eligibility requirements and loan terms. The provision also sets out terms for payment deferral, application deadline of Dec. 31, 2020, lending eligibility, opportunities for the second market, and lender compensation.

#### **Sec. 113. Eligibility of 501(c)(6) Organizations for Loans Under the Paycheck Protection Program**

- This provision expands PPP loans to 501(c)(6) organizations that do not receive more than 10% of receipts from lobbying activities, the lobbying activities of the organization do not comprise more than 10% of the total activities of the organization, the organization employs under 50 people, and the covered loan is \$500,000 maximum. Chambers of commerce and destination marketing organizations that are 501(c)(6) organizations with less than 300 employees may also be eligible.
- **Impact:** This provision expands the PPP loans to certain 501(c)(6) organizations, including chambers of commerce

and destination marketing organizations. The provision has limitations on the size of the entity and lobbying.

#### **Sec. 114. Prohibition on Use of Loan Proceeds for Lobbying Activities**

- This provision adds a clause to the Small Business Act that prevents any proceeds from being used for lobbying activities.
- **Impact:** This provision adds a clause to the Small Business Act that prevents any proceeds from being used for lobbying activities.

#### **Sec. 115. Effective Date; Applicability**

- This provision states that all amendments made to the Small Business Act and Title I of the CARES Act should be effective as if they were included in the CARES Act.
- **Impact:** This provision states that all amendments made to the Small Business Act and Title I of the CARES Act should be effective as if they were included in the CARES Act.

#### **Sec. 116. Bankruptcy Provisions**

- This provision establishes a process for bankruptcy if small business debtors are eligible for the PPP loans. This provision will require court approval for loans and given a superior claim in bankruptcy. The provision also provides confirmation of plan organization as it is related to the COVID-19 pandemic, confirmation of plans for family farmers, and confirmations of plans for individuals. The provision will take effect when the administrator submits a written determination that any debtor in possession or trustee is eligible for a loan. The provision sunsets two years after enactment.
- **Impact:** This provision creates new terms through the bankruptcy process in the case where small business debtors are eligible for PPP loans.

#### **Sec. 117. Conflicts of interest**

- This provision sets out definitions for controlling interest to mean nothing less than 20% of the outstanding amount of any class of equity. This provision also requires executive officers of an entity seeking a loan to disclose their status if they are the president, vice president, head of an executive department, a member of Congress, as well as a spouse, child, son-in-law or daughter-in-law.
- **Impact:** Allows for transparency for those requesting loans to disclose their status if they are the president, vice president, head of an executive department, a member of Congress, as well as a spouse, child, son-in-law or daughter-in-law and maintain nothing less than 20% of the outstanding amount.

### **TITLE II—SMALL BUSINESS PROGRAMS GENERALLY**

**Overview:** This section creates a new facility under the Small Business Investment Act of 1958 where SBICs may apply to invest with the SBA. Parameters of the facility are laid out in the new section entitled: Small Business Growth and Domestic Production Facility.

#### **Sec. 121. Small business investment company program**

- This provision adds a new section to the Small Business Investment Act of 1958, called “Section 321. Small Business and Domestic Production Recovery Investment Facility.” “Eligible Small Business Concern” is defined as a concern that meets the revenue reduction requirements of section 7(a) of the Small Business Act, is a manufacturing business with a NAICS code beginning with 31, 32 or 33, or is located in a small business low-



income census tract. This section further defines that participating investment companies, defined as SBICs and protégé investment companies can invest in, where the SBA will consider bank-owned, non-levered applications for this facility.

- The administrator will establish and carry out a facility to improve the recovery of small business concerns. It will be administered by the administrator through the associate administrator. Any SBIC may apply to participate in the facility. Application requirements include a business plan, information regarding investment qualifications, and a description of how the applicant meets selection criteria. After 90 days of enactment, the administrator shall reduce application requirements for those applying to operate as a participating investment company to encourage participation.
- The selection of participating investment companies must be determined no later than 60 days after the application is received. Selection criteria include the probability that the investment strategy of the applicant will repay the financial assistance of the administration, provide capital to eligible small business concerns, create and preserve jobs, meet the applicant's financial goals, and support small business low-income census tracts. The SBA can provide provisional approval within 12 months.
- The administrator is permitted to purchase or commit purchase from a participating investment company equity-like bonds. This means the Administrator is permitted to purchase bonds from the SBIC or commit to purchase bonds from the SBIC. The bond is subject to the following terms and conditions:
  - The bond cannot be issued for a term of less than 15 years with an interest rate of 2%.
  - Interest on the bond shall accrue and be payable as opposed to cash interest payments.
  - The bond shall be prepayable without penalty after one year from the date the bond was purchased.
  - The administrator is entitled to share in the SBIC's profits of one-third of the commitment approved plus the regulatory capital of the participating investment.
  - The administrator shall receive a share of a maximum of 2%, deposited into the fund, from the SBIC's commitment, and SBIC managers may receive a maximum profit of 25% minus the interest paid to the administrator.
  - No distributions on capital may be made by the investment company to the investors prior to the payment of the administrator.
  - Repayments of the principal shall be made at the same time as returns of private capital and in amounts equal to the pro rata share of the administration amount.
  - If the SBIC liquidates or defaults, the administrator has priority over all equity of the participating investment company and paid prior to other distributions to investors or managers.
  - The maximum amount of outstanding bonds and commitments to purchase bonds for any participating investment company must be the lesser of two times the amount of regulatory capital or \$200 million.
  - Commitments by the administrator to purchase bonds will remain available for four years from when the commitment is made.
  - A condition for receiving a commitment under the facility, at least 50% of the amount invested must be invested in COVID-19 recovery small businesses and critical supply chain businesses. SBICs must also invest a portion of capital in businesses owned by socially disadvantaged individuals.
- Distributions to the administrator must be made in the same form and manner as made to investors or

consistent with regulations and policies of the administrator. The administrator may not charge fees for participating investment companies outside of those of the licensing process. The administrator shall establish a pathway-protégé program to provide protégé investment companies to receive technical assistance from the participating investment companies.

- The Treasury will establish a loss limiting fund for making commitments and purchasing bonds with equity features and receiving capital returned by the participating investment company. Amounts deposited into the fund should be available to the administrator until expended. The amount of \$10 billion is appropriated to support this program.
- For non-bank, non-levered applications, the administrator has 45 days after receiving the application to approve or disapprove.
- **Impact:** This provision creates a facility for bank-owned, non-levered SBIC to invest in. It provides detailed information of the establishment of the facility, application process, and selection of participating investment companies. The fund will require certain terms and conditions for the bonds. Congress will appropriate \$10 billion to this fund.

### **TITLE III—APPROPRIATIONS**

#### **Sec. 131. Commitment authority and appropriations**

- Extends the authorization for the SBA to administer PPP loans through Dec. 31, 2020 (extended from Aug. 8, 2020), which effectively extends the application period for new PPP and PPP Second Draw loans.
- Makes the total PPP loan funds available \$749 billion by directing the rescission of \$100 billion from existing PPP funds back to the Treasury, and then providing \$190 billion for PPP and PPP Second Draw Loans.
- Provides \$57.7 billion in direct appropriations (but authorizes up to \$100 billion) for Recovery Sector Loans through Dec. 31, 2020.
- Provides \$10 billion for the SBIC program until Sept. 30, 2023.
- **Impact:** Extends the deadline to apply for a PPP loan to Dec. 31, 2020, and funds and recapitalizes new and existing SBA programs by a combined total of \$157.7 billion.

### ***Safely Back to School and Back to Work Act***

#### **TITLE II—EDUCATION PROVISIONS**

Title II of the Safely Back to School and Back to Work Act includes a number of provisions aimed at providing flexibilities to student loan borrowers and increasing access to and choice in child care and K-12 schooling. Specifically, this section includes provisions allowing borrowers to have no monthly payments if they have no income, and to pay no more than 10% of their income when they begin earning income. The section also provides K-12 scholarships to students to allow for increased school choice, and grants to child care providers so they can cover fixed and operational costs associated with the pandemic. The section extends a number of the CARES Act's financial aid and work study provisions; however, it does not include an extension of the CARES Act's student loan provisions or any student loan forgiveness.

#### **Sec. 201. Simplifying Student Loan Repayment**

- Limits the nine existing repayment options for loans that enter repayment on or after Oct. 1, 2020, to two:
  - A standard repayment plan with a fixed annual repayment amount paid over a period not to exceed 10

years; and

- An income-based repayment plan with an annual repayment limit of 10% of discretionary income (the income amount about 150% of the federal poverty line).
- **Impact:** This provision simplifies the federal student loan repayment system and includes an income-driven repayment option that would allow student loan borrowers earning no income to have no monthly payment obligation. This proposal is very similar to the existing Revised Pay As You Earn (REPAYE) repayment plans, which exempt borrowers earning less than 150% of the poverty limit from any payment obligation, and cap other borrowers' student loan payments at 10% of their discretionary income.

#### **Sec. 202. Emergency Education Freedom Grants**

- Authorizes one-time, emergency appropriations funding for elementary and secondary student scholarship-granting organizations (SGOs) in each state.
- The Secretary of Education must make the allotments by no later than 30 days after the date of enactment of this act.
  - States receiving funds are to award subgrants to SGOs that administer scholarships for students to use toward qualified educational expenses including private or religious school tuition and homeschooling expenses.
  - Any amount of the allotment received by a state that is not used by March 30, 2021, must be returned to the Secretary of Education to be redistributed among remaining participating states.
- **Impact:** This provision redirects a portion of coronavirus relief funding to school-choice programs. Specifically, it authorizes funding for grants that states could use to fund SGOs that offer families direct educational assistance to cover private school tuition or other educational expenses, such as the cost of homeschooling.

#### **Sec. 203. Back to Work Child Care Grants**

- Authorizes \$10 billion in short-term assistance—not more than nine months—to help child care providers reopen and maintain operations by paying for fixed costs, staffing and professional development costs, and increased operating expenses due to COVID-19.
- Funds would be distributed by the Secretary of the Administration for Children and Families (ACF) under the Child Care and Development Block Grant (CCDBG) Act of 1990.
- Providers receiving funds must agree to follow applicable health and safety requirements related to COVID-19, and must certify in good faith that their program(s) will remain open for at least one year after receiving funding.
- Funds must be repaid if a provider fails to provide or comply with required assurances, or if a lead agency fails to obligate granted funds within 12 months of receiving the grant.
- **Impact:** This provision provides temporary funding to help qualified child care providers pay for increased costs and operating expenses associated with reenrolling children and rehiring teachers and staff amid the COVID-19 pandemic. The grants are set up to provide direct support for child care facilities to help ensure working parents have access to care as they return to work.

#### **Sec. 204. National Emergency Educational Waivers**

- Grants the Secretary of Education the authority to provide waivers from the Elementary and Secondary Education Act (ESEA) and the Rehabilitation Act, except with regard to civil rights laws, if the Secretary of Education

determines such a waiver is necessary and appropriate due to the COVID-19 declaration of disaster.

- Waivers may extend for a period not to exceed one academic year, unless an extension is granted.
- The Secretary of Education must approve or disapprove a waiver request not more than 30 days after the date on which it is submitted.
- Provides modest flexibilities within the Individuals with Disabilities Education Act (IDEA) to allow for children to receive services as they transition from Part C to Part B of the act and also to provide a deferral of the work or repayment requirements to personnel development scholarship recipients if employment was interrupted due to the COVID-19 declaration of disaster.
- **Impact:** This provision allows the Secretary of Education to waive federal statutory or regulatory provisions as deemed necessary and appropriate during the public health emergency.

#### **Sec. 209. Amendments to Education Provisions of CARES**

- Clarifies and extends Campus-Based Aid Waivers (CARES Act Sec. 3503).
  - Clarifies that the CARES Act waiver for matching Federal Work Study funds extends to participating nonprofit organizations that provide opportunities for students to work in community service positions.
  - Extends existing CARES Act authority to reallocate Supplemental Education Opportunity Grant or Federal Work Study funds through the latter of the end of the 2020-21 award year or the end of the qualifying emergency.
- Extends existing CARES Act waivers for Federal Work Study into the 2020-21 award year (CARES Act Sec. 3505).
- Extends existing CARES Act waivers for foreign institutions through the latter of the end of the 2020-21 award year or the end of the qualifying emergency (CARES Act Sec. 3510).
- Clarifies that the CARES Act relief for federal student loan borrowers, which provides 0% interest accrual until Sept. 30, 2020, also applies to students in a period of in-school deferment (CARES Act Sec. 3513).
- Creates parity with regard to full-time service requirements for TEACH and Stafford loan teacher forgiveness for Federal Perkins Loans cancellation (CARES Act Sec. 3519).
- Clarifies that any funds received by a student or their spouse or parent during the public health emergency should not be counted toward taxed or untaxed income in the Needs Analysis formula for the Expected Family Contribution for the current or any upcoming award years (CARES Act Sec. 3520).
- Allows financial aid administrators to determine that the income earned from work for an independent student is zero in the “Professional Judgment” for federal student aid during the 2020-21 and 2021-22 award years, rather than looking at the previous year’s tax data, in order to help those recently unemployed due to COVID-19 (CARES Act Sec. 3521).
  - Allows financial aid administrators to make appropriate adjustments for other family members if the student is married or a dependent, including considering an unemployed family member’s income earned from work as zero.
  - Requires that the Secretary of Education adjust program review criteria for institutions of higher education participating in Title IV of the Higher Education Act to account for the unusually high number of professional judgments.
- Adds a question on the Free Application for Federal Student Aid (FAFSA) applications for the 2020-21 and the

2021-22 award years (CARES Act Sec. 3522).

- The question shall ask applicants if they have lost significant income earned from work during the COVID-19 national emergency, and if they have, the Secretary of Education shall direct the applicant to follow up with the financial aid administrator at their institution.
- **Impact:** This provision includes several expansions and clarifications of provisions included in the CARES Act with the goal of alleviating the economic burden on students related to their higher-education expenses. The provisions are largely intended to add flexibility in federal work study and financial aid programs.

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